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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,764	10/06/2003	Warren Scott Fentress		1626

7590 05/19/2004

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7 Woonsocket Ave  
Shelton, CT 06484

EXAMINER

SUHOL, DMITRY

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/678,764	FENTRESS, WARREN SCOTT	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dmitry Suhol	3712	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The basic building block and its attachment means was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear if the basic building block is planar (e.g. a 2-D) triangular member or a multidimensional hedron as shown in figure 1. It appears as if a planar member is being claimed in which case the planar elements rely upon circular magnets arranged on/in their respective faces to hold them together in which case it is not clear how the elements would be held together since the magnets would not be touching (i.e. figure 1 shows elements in the central portion of the elements however it would appear that the elements are held at their respective corners).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3712

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, there is no antecedent basis for "said triangular member" since the claim is dependent from claim 1 which claims "a plurality of triangular members", therefore it is unclear which one of the plurality is being referenced in claim 9. Additionally, the structural features encompassed by "a circular half inch magnet" can't be determined. It is unclear if the half-inch dimension is a circumference, diameter, radius, area or some other dimension.

Regarding claim 1, the structure encompassed by the phrase "such that adjacent members have opposite polarity of said magnet facing said triangular members" can't be determined. The arrangement of the magnets relative to the triangular members is not clear.

The remainder of the action considers the claims as best understood.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrlich '004. Ehrlich discloses a magnetic toy containing all of the elements of the claims including with reference to claim 1, triangular modular members (1) assembled to form multidimensional hedrons (figures 7-9 and col. 2, lines 8-13), wherein each triangular member comprises a magnet (2) such that adjacent members have opposite polarity of the magnet facing the triangular members (figure 6).

Regarding claims 2-8 and 10-20, the variety of shapes encompassed by the claims are inherent in the kit of Ehrlich since the same basic building block is disclosed as the applicant, therefore the same variety of shapes can be constructed. Additionally, Ehrlich clearly states that virtually any 3-D object having polygon shaped faces can be constructed (col. 2, lines 8-13).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Zeischegg '360. Zeischegg discloses a magnetic toys containing all of the elements of the claims including, triangular modular members (6) assembled to form multidimensional hedrons (figures 1-4), wherein each triangular member comprises a magnet (col. 1, lines 59-61) such that adjacent members have opposite polarity of the magnet facing the triangular members (figure 1 where the bases of each member 6 would inherently have opposite poles in order to connect to each other).

***Claim Rejections - 35 USC § 103***

Art Unit: 3712

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zeischegg '360. Although Zeischegg discloses all of the claimed elements, as stated above, and further including the attachment means being circular (figure 1 and col. 4, line 45), the reference fails to teach a specific dimension for the magnet and base as required by claim 9. However, it would have been obvious to manufacture the device of Zeischegg with a magnet being half-inch and a base member being two inches for the purpose of easy handling by the user and good attachment. Furthermore, the specific dimensions for the magnet and base are considered to be a pure choice of design since applicants do not state any criticality or advantage in utilizing such dimensions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3712

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ds

A handwritten signature in black ink, appearing to read 'D. H. Banks', with a large, stylized initial 'D'.

DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700